REMARKS

Applicant cancels claims 4-9 and 11-22 and amends claims 1-3 and 10 such that claims 1-3 and 10 are pending in this application. Applicant respectfully requests allowance of all the pending claims.

Election/Restriction

The Examiner has identified in the application four groups of claims as follows: Group I (claims 1-3 and 10) drawn to a frame and method for constructing the frame; Group II (claim 4) drawn to a method for making non-wood structural elements; Group III (claims 5-9 and 11-17) drawn to a lumber product; and Group IV (claims 18-22) drawn to a retaining wall. In a telephone conference with the Examiner on May 20, 2003, Applicant's attorney provisionally elected to prosecute claims 1-3 and 10. In the present Amendment, Applicant's attorney confirms the election to prosecute the claims of Group I (claims 1-3 and 10) without traverse and cancels claims 4-9 and 11-22 without prejudice.

Drawing Objections

The Examiner objects to the drawings under 37 C.F.R. §1.83(a) as failing to show every feature specified in the claims. In response, Applicant amends Fig. 1 to illustrates a first planar frame section fastened to a substantially perpendicular second planar frame section.

Anything that is disclosed in one of the originally-filed drawings, specification, and claims can be later added to any other of the drawings, specification and claims without the addition of new matter. Originally-filed claim 2 disclosed fastening a first planar frame section to a second planar frame section such that the plane of the first frame section is substantially perpendicular to the plane of the second frame section. Therefore, the amendment to Fig. 1 does not introduce new matter because the subject matter of the amendment was disclosed in originally-filed claim 2. Applicant respectfully requests the Examiner to withdraw the objection to the drawings and enter Fig. 1 into the drawings.

The Examiner rejects claims 1-3 and 10 under 35 U.S.C. §102(a) as being anticipated by Canadian Patent No. 2,247,287 ("Di Lorenzo"). The Examiner also rejects claims 1-3 and 10 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,751,803 ("Zimmerman") in view of Di Lorenzo.

Applicants respectfully submit that Di Lorenzo does not qualify as prior art under §102(a). Section 102(a) states that a person shall be entitled to a patent unless the invention was patented or described in a printed publication in this or a foreign country before the invention thereof by the Applicant for a patent. Applicant's date of invention is at least as early as the claimed priority date of April 5,1999, which is the filing date of parent Application No. 09/286,083. Although Di Lorenzo was filed in Canada prior to April 5, 1999, Di Lorenzo was not laid open to the public (i.e., published) until December 9, 1999, which is clearly after the claimed priority date for the present application. Therefore, Applicant respectfully submits that Di Lorenzo does not qualify as prior art under §102(a) and respectfully requests the Examiner to remove Di Lorenzo from the available prior art. Accordingly, all the rejections even partially based upon Di Lorenzo are no longer relevant.

The Examiner rejects claims 1-3 and 10 under 35 U.S.C. §103(a) as being unpatentable over Zimmerman in view of United States Patent No. 5,494,513 ("Fu").

Amended independent claim 1 recites a frame assembly for use in construction of a building including, among other things, at least one precast elongated linear structural member connected to at least one of a pair of precast elongated linear structural members by inserting a fastener through one and into the other to mechanically join them together.

Amended independent claim 2 recites a method for constructing a building using non-wood construction products including, among other things, inserting a fastener through at least one precast intermediate element or a precast elongated first end element and into the other to mechanically join them together.

Amended independent claim 3 recites a structural frame for use in forming a building including, among other things, at least one of a plurality of precast elongated intermediate elements connected to a precast first end element by inserting a fastener through one and into the other to mechanically join them together.

Amended independent claim 10 recites a frame assembly for use in construction of a building including, among other things, at least one of a pair of precast elongated linear structural members connected to at least one precast elongated linear structural member by inserting a fastener through one and into the other to mechanically join them together.

Claims 1-3 and 10 each recite a frame assembly including a first precast elongated linear structural member connected to a second precast elongated linear structural by inserting a

fastener through one and into the other to mechanically join them together.

Zimmerman discloses a method of constructing a concrete wall structure (14) in an assembly jig (12). The method includes orienting precast concrete studs (20) in a horizontal plane to build the framework of the wall (14). Each precast concrete stud (20) includes a reinforcing bar (29) protruding from one edge. Wire mesh (28) and rigid sheet insulation (26) are laid over the framework, and then concrete is poured over the wire mesh (28) to form the concrete beams (23, 27) and the concrete surface (30) resulting in an integral concrete wall structure (14). When the concrete hardens it encapsulates the ends of the concrete studs (20) (including the reinforcing rods (29)) thereby forming a unitized wall structure which bonds together the entire wall section (14).

Fu discloses cellular concrete with a mineral addition of Zeolite.

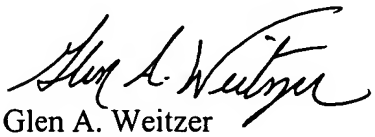
Zimmerman and Fu, alone or in combination, do not teach or suggest a first precast elongated linear structural member connected to a second precast elongated linear structural member by inserting a fastener through one and into the other to mechanically join them together. Zimmerman does not teach or suggest mechanically joining any precast concrete studs whatsoever, let alone joining them by inserting a fastener through one precast stud and into another precast stud. Rather, Zimmerman discloses casting concrete beams (23, 27) around the ends of the precast concrete studs (20).

Fu does not cure the deficiencies of Zimmerman. Specifically, Fu does not teach or suggest any method of joining precast elongated linear structural members. Therefore, Zimmerman and Fu, alone or in combination, do not teach or suggest the subject matter of claims 1-3 and 10. Applicants respectfully submit that the Examiner has failed to present a *prima facie* case of obviousness based upon the prior art as required by 35 U.S.C. §103(a).

Accordingly, claims 1-3 and 10 are allowable.

The Examiner is invited to contact the undersigned attorney should the Examiner determine that such action would facilitate the prosecution and allowance of the present application.

Respectfully submitted,



Glen A. Weitzer
Reg. No. 48,337

Docket No.: 53182-9007-00
Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108

(414) 271-6560